THE RESPONSIBILITY MODEL

(My contribution to the already glutted market of ideologies)

An Honors Thesis (Honors 499)

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ABSTRACT

The *Responsibility Model* is divided into two sections: a nominal and an operational definition. The nominal definition covers the history of selected political topics, and then elaborates on how the model would differ from the norm, as pertaining to those topics. Special attention is paid to Supreme Court decisions and the constitutionality of issues. The operational definition was further subdivided into two parts. The first part consisted of weekly research culminating in a newspaper column on political topics that can be related to and explained by the model. The second portion focused on replies and criticisms of readers, and the author's reactions to them. In the reactions political phenomenon are attempted to be explained, and three public policy models are presented to make determinations as to good policy.

Spring 1995: My final semester here at Ball State. It's finally time to do that senior thesis. The study of politics is almost a way of life for me. Since childhood, I have dreamed of becoming a great leader. I used to imagine my own ideal government, and how things would be run, if I was in charge. Problem is, that when you are young, your imagination runs wild. You still believe that there is the possibility of such a utopia. As you age, however, you become more cynical. Your "utopian fantasies" slide to the back of your mind and real life takes over.

Everyone's idea of a perfect government is different, however minutely, from the next's. We have liberals, conservatives, fascists, libertarians, anarchists, socialists, communists, etc.,etc. The list goes on and on. In all of this confusion, I have come up with a new model to add to the already glutted market of ideologies. I like to call it the responsibility model.

It is constructed, mostly, from libertarian and conservative principles. The primary focus is upon shifting responsibility for certain actions from the government back to the individual, where they belong. It also returns certain rights, taken by the government, back to individuals. The model sometimes concentrates upon what should be constitutional, rather than making some interpretation of our current framework. Our current document should be taken more literally, or the wording should be more concise, so that the law isn't subject to the personal interpretation of those currently in power. Before presenting my model, however, I feel that I need to back up first.

Everyone claims to have certain beliefs about how things should be run, as I already pointed out. But, there must be a starting point. What is my starting point? I'll

begin by describing myself. First off, I am a white male. Already, I'm at a disadvantage. Our diversity-minded nation might prefer someone of color, or a member of the female gender so that we are not subjected to the run-of-the-mill, old boy's school, white-male dominated society lecture on the true nature of politics. Oftentimes, it is too easy to look merely at the individual's background or physical characteristics, rather than the content of their message. However, it is your job, as the critically-minded reader, to discern between true objectivity and biased sentiment.

Secondly, I am a Christian. With this classification, also, go certain stereotypes. However, just because it is true that my Christian beliefs *have* helped form my point of view, it does not follow that I am willing to impose my beliefs on everyone else. Some beliefs of Christianity can apply to all peoples, some cannot. It all depends upon the fine line between what should be defined as a moral issue and what should be an issue of law. Many people, especially certain Christians in the media spotlight, have trouble making a separation between the two when it comes to this matter.

You may even find me quoting scripture, however it is not to be used to convince non-Christians of the validity of my ideology, however, it is used to clarify a Christian and his/her beliefs' place in the political arena. The concept of separation of church and state is very hazy. It is amazing how many people will quote scripture to those that don't even follow Christianity. What do they care? Christianity is founded on beliefs. If you don't have those "beliefs", scripture-based arguments often have little or no effect. Oftentimes, quoting scripture serves to only alienate non-Christians, because they feel that the religious point of view is being forced upon them.

Many Christians have interpreted the Bible for their own advantage, to the extant that the intended meaning is gone. Somewhere along the line, many Christians fell into the trap of believing that if the government legalizes an action, then God must think it is acceptable. A classic example of this, is the abortion issue, which I will delve further into later. Many churches condone this behavior, or in the very least, look the other way. Surgeon General nominee, Henry Foster, an obstetrician who has performed many abortions, is a Baptist. His church is fully behind him. Meanwhile, the Bible, that all Christians profess to believe in, clearly denounces harming the fetus in the womb. It has all been clouded over with politics. Our God is no longer in heaven, but rather, he lives in Washington D.C.

Don't get me wrong. I believe Christians can take the opposite extreme. Certain presidential hopefuls in Washington are intent on pushing the Christian agenda down the throats of the American public. An example: the school prayer issue. God wouldn't even approve of mandated school prayer. Why? To God, a forced prayer is useless. The intent of the individual is all that matters. If this is not going to be political primer for Christians, why did I take the time to point out where my beliefs are grounded? I am just giving you some background, however, it will be your job, as the reader, to discern between what is white male christian sentiment and what is applicable to the world today. Hopefully, you will not have to make that distinction.

Now, down to business. First off, we will start off with a nominal definition of each area covered by the responsibility model. This definition provides background information,

and contains a basic explanation of where it would deviate from today's currently accepted policies and why.

The next step is to make an operational definition, or the next best alternative. This semester, I have taken up the timely practice of journalism by writing a weekly column in the *Daily News*. The principles of the Responsibility Model will be applied to modern-day real-life issues. Writers for the paper have often come under criticism for their beliefs, their writing style, or any little point that happens to draw someone's attention. This avenue will present an excellent opportunity for my new ideology to be put to the test. Remember. It draws a little from everything, even though it has roots in conservatism, it is not necessarily conservatism.

As a side note: I named the column, *"The Write Wing"* just to test the knowledge of my peers. A conservative stance, on one issue, does not necessarily make one a conservative. However, it is interesting to note, that people will stop at nothing to stereotype their opponent if they feel it would be to their advantage. I honestly believe that this is a big problem that we have with society today. Many people are all too willing to categorize everyone else, instead of treating each other as individuals, which leads us into classification schemes, my first topic of discussion.

Classification Schemes
(Namely affirmative action)

All government actions need to based upon the individual. Many contend that dealing with individuals on a case by case basis would be too costly, and thereby impractical. I can see where this will run us into the problem of added paperwork, however we also may notice a reduction in litigation, as well. Also, it is important that we take this approach, because the only true way we may give people "equal protection of the laws" is through equal, individualized treatment.

The most prevalent policy, in this category, is the affirmative action program. America has been primarily a white-male dominated society since its inception. This dominant group in society discriminated against blacks and other minorities, including women; in employment, voting rights and education, to name a few. This is generally accepted as fact and is already well-documented, so I won't go into it.

After the civil war, we passed three amendments known as the reconstruction acts. These amendments were passed to re-unify the torn nation by giving rights to those who had been denied them previously. The Thirteenth Amendment outlawed slavery. The Fourteenth granted due process of the laws to state citizens (the Fifth Amendment only protected citizens from the federal government), and the Fifteenth guaranteed all races (males only) the right to vote. This right was also slightly touched upon in the Fourteenth amendment. (Women would have to wait until the passage of the Nineteenth, to be given this right.) All three amendments had provisions allowing congress to make laws to enforce their provisions.

The Fourteenth Amendment, in particular, is our focus here. Section 1 reads:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**

The last section is bolded out, because it is probably one of the most quoted phrases in courtrooms all across the United States. The "due process" section is probably used just as frequently, but the "equal protection clause" of the Fourteenth Amendment has been the site of enormous controversy, especially when it comes to attempts at remedying discrimination, which deals directly with classification schemes.

On July 2, 1964, the second Civil Rights Act was passed. It took nearly a hundred years for congress to pass legislation that *actively* "sought to end abuses in voting, public accommodations, education and employment."[1] Title VII, of the act, deals with fairness in employment, which is where I feel we took a big step backward, whereas we could have made some real progress.

The act, first off, established the Commission on Equal Employment Opportunity, which was designed, to see to it that these provisions were carried out. It also created what are known as protected groups, or classes.

Protected Class: A group of people distinguished by the special characteristic(s) that has inhibited its progress: race, color, ethnic identification, national origin, religion, sex, age, disability, and veteran status.[2]

When first viewing this definition you might be tempted to think that nearly anyone can be included in a protected class. Almost. However, the supreme court has come to

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[1] Doggett, Clinton L. and Doggett, Lois T. *The Equal Employment Opportunity Commission.* Chelsea House Publishers, 1990.

[2] Weiss, Donald H. *Fair, Square, and Legal.* American Management Association, 1991.

the determination that race and color mean "people of race or color other than white." The term sex also is meant to cover both males and females, but the following confuses that assumption.

Managers Cannot: Fail or refuse to hire any person or to otherwise discriminate against any person with respect to compensation, terms, conditions, or privileges of employment because he or she is a **member** of a protected group.[2]

If we go by the first definition, everyone is in a protected class. (You must be female or male.) Notice that the act stipulates, that you must be a "member." Whereas it might seem white males are protected from discrimination by this act, in practice, though, they are not. Currently two-thirds of the population can claim some sort of protected status on all sorts of applications for employment, and education as well. I suppose it is not by coincidence that the other 32% of the population in the United States is comprised of white males.

Out of the Civil Rights Act sprung the first affirmative action programs to assist these "protected groups."

Affirmative Action: Active efforts in employment practices that take into account race, sex, and national origin in order to prevent or remedy discrimination and compensate for past discrimination.

Let's look at what affirmative action policies have done for a certain segment of the population.

Unemployment Rate Age 16 & Over[3]
Males

	White	Black	Ratio
1964	4.1	8.9	2.2
1992	6.9	15.2	2.2

[3] *Economic Report of the President*, 1993, Table B-38.

As you can see, this is only one grouping. However, instead of realizing that we may be headed in the wrong direction, we continue to push such programs even harder. Why are white males so infuriated with this policy if it hasn't even worked? And furthermore, why hasn't it worked? A possible explanation? Any employer that is likely to discriminate, will. They view such policies as a threat and will engage in retaliative behavior whenever they think they can get away with it.

Ronald J. Fiscus, in his argument of constitutional logic behind affirmative action, presents us with a test for explaining this phenomenon.[4]

"When one finds race based differences within a society, there are but two possible explanations: racial superiority/inferiority at birth, or racism in society."

I believe he is correct to a point, but yet, he may have oversimplified his answer. Racism does play a part, but other factors, such as past discrimination, need to be taken into account. Disparities exist, because of discrimination from earlier generations. Racial equality is not going to clear up this situation overnight. If we accepted the Fiscus definition, we would be led to believe racism is currently much more prevalent, in our society, than it actually is.

Justice Powell, in the *Wygant*[5] decision, delivered his support for affirmative action as a remedy for past discrimination.

"As part of this nation's dedication to eradicating racial discrimination, innocent persons may be called upon to bear some of the burden of the remedy."

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[4] Ronald J. Fiscus, *The Constitutional Logic for Affirmative Action*, (1992).

[5] *Wygant vs. Jackson Board of Education*, 476 U.S. 267 (1986).

Absolutely unbelievable! Just what is justice Lewis Powell trying to tell us? Now, imagine that there is another judicial level higher than the Supreme Court, and that you are a sitting as a member. Review the constitutionality of his statement keeping the following in mind:

"...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Recognize this? It is from the Fourteenth Amendment. If we accept Powell's construction of affirmative action, how can we not be violating the equal protection clause? The innocent are to be protected, except where predecessors of the same color are to be concerned. This policy might remind one of the use of "grandfather clauses", to get around the reconstruction amendments, by not allowing blacks to vote. This type of policy was eventually declared unconstitutional in the *Guinn* decision. Such policies basically precluded you from voting, if your ancestorage was unable to vote before a certain date, that was usually included in the statute.

Now, the tables are turned, and innocent whites are made to pay for the mistakes of *their* forefathers. Anyone who still has a question about the Supreme Court's ability to twist the meaning of the constitution to fit a specific purpose, please raise your hands.

I think William O. Douglas summed it up best in the *Defunis*[6] decision. The court later held the issue, racial preferences in the University of Washington Law School admissions process, to be moot, but Douglas set the stage for cases that would follow.

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[6] *DeFunis vs. Odegaard*, 416 U.S. 312, (1974).

> There is no constitutional right for any race to be preferred...The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized.

We would have to wait until 1978 before the court would make a decision on affirmative action. In *Regents of the University of California vs. Bakke*,[7] the court held that a public institution, such as the medical school of California University at Davis, could not use racial quotas in the hiring process. Yet they remain commonplace in the private workforce.[8] Affirmative action causes de facto discrimination against minorities and women and legalizes discrimination against white males in the workplace. This will continue, sadly enough, until we move towards a policy of *true* equality for all, with a common drive for strict enforcement of this standard.

Common-Sense Assumptions

I often refer to taking the common-sense approach to the politics. Not all policy decisions need to be based on a set of statistics or a Supreme Court ruling. Sometimes, your gut feeling may the most correct. The courts have employed a similar doctrine. It's called the "reasonable person's standard." How would an ordinary person act in this situation? In the instant case, how should an ordinary person act to ensure fairness?

Affirmative action. We can propose a blanket solution for racial discrimination. Everyone will be placed into groups: white, black, male, female, etc., etc. We will study the population and based upon statistics develop *target* numbers of minorities and women for hiring and promotion purposes. What is wrong with this one might ask?

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[7] *Regents of the University of California vs. Bakke*, 438 U.S. 265 (1968).

[8] See column 12, appendix A.

[1]Making target numbers is totally ridiculous. These numbers assume that there are enough qualified applicants to fill these positions. I interviewed Wynola Richards, Ball State's director of affirmative action and she informed me that this was just the case. What do we do about it? We waste valuable resources by advertising all over the United States in order to fill a position. Meanwhile, a qualified applicant will wait. Why? Because he is a white male.

[2]We place people into groups. In my opinion, one of the biggest factors contributing to racism is stereotyping. Consider the following hypotheticals.

> Dave comes from a small rural town that is predominantly white. In fact, there is only one black family residing there. Dave becomes involved in a fight with one of the members of the family. After that, he hate all black people, because of his limited exposure those of a different race. He has stereotyped all black people. From now on, Dave sees the color first, and then the person.

> Steve and Derrick are up for a promotion. Derrick is black. Steve is white. Steve is slightly more qualified than Derick. Management decides to promote Derrick, because affirmative action policy dictates that the company promote women and minorities whenever possible. Later, Steve finds out that he was actually more qualified, but because the company had a quota policy, Derrick was promoted. Steve now hates Derrick. He was promoted over him merely because of his color. In fact, Steve hates all black people.

Affirmative action requires you to look beyond a person's qualifications and take into account their race or their sex. Is this not what we seek to end? Any policy that places people into groups, in this way, is inherently wrong. Everyone in this country deserves to be treated like an individual. These policies assume that if one member of a group benefits, by being hired or promoted, then all benefit. Please explain to me how, because I don't understand. Time for another hypothetical example that probably occurs every day.

> In Seattle, Washington, the Brand X company has a successful affirmative action program. Joan Clinton is promoted in a company that has historically excluded women from leadership roles. Way to go Joan. Chalk one up for affirmative action.

> In Indianapolis, Indiana, the Brand Y corporation has also, traditionally excluded women. Louise Bush, an employee for ten years, with an impeccable service record, is turned down for promotion against a younger less experienced white male. The company covers its tracks and Louise is cheated out of her promotion.

Question? Does Louise really benefit from affirmative action? If you said "no", then you were right. This example is a primary reason why affirmative action is generally a failed policy. It's like putting scotch tape on a leaky pipe. The pipe is still faulty, we have just, temporarily, covered up the problem.

What should be our focus? Our money would be much better spent going after those actually breaking the law than assuming everyone is going to. If enforcement of equal opportunity is adequate and the punishments are stiff enough, everyone will be promoted fairly.

Which option would you choose?

(A) Black Female	Qualified (Better Worker)	Higher Productivity
(B) White Male	Not Qualified (Slacker)	Time in jail, fines out the wazoo

Another tough question. Giving preferential treatment to people of my own race would not seem so important, not to mention the loss in production I would experience, if I chose the less qualified worker. Choosing someone because of their race or sex instead of ability, does not do your profit margin justice. I'm not saying that this action doesn't occur, because I'm sure it does. However, I'm pointing out, that employers, such as these, are harming themselves as well.

I think I can sum it up best by a few remarks my father made. I often call him just to discuss politics. We don't always agree, but since he is very informed about what is going on in the political arena, I can consider him a valuable resource.

> "Look at it from the top to the bottom. Would you like to have a brain surgeon operating on you that was promoted because of affirmative action? He's good, but is he the *best*? OK. Now lets go to the lower end of the spectrum. How about your children? Would you want a bus driver that received the job because of affirmative action? He can drive, but is he really good enough?"

The Daily News

Now, to the column that reopened the controversy here at Ball State.[9] Affirmative action seemed like a good first topic. I have always disliked this policy. Not necessarily because it was specifically geared towards me, a white male, but because of what it stood for. Traditionally, white males have held the positions of power in our society, if not by totally unfair and capricious means. That, I believe, to be totally true. How does society propose to handle this situation?

The first day after my column, and already a negative response.[10] Excellent. My reply:

> In all fairness, I believe that I am entitled a response to Mr. Ottman's remarks. It was not that the columnist did not completely understand the policy, but rather that the Students' Rights Activist spent too much time reading into the column.
>
> First off, I never said that affirmative action was a success. I did say that some firms carry it too far, by imposing hiring quotas, which *is* true. I attacked affirmative action merely from the standpoint that it places people into categories, which I believe to be wrong, regardless of the outcomes.
>
> Furthermore, I did my research. I interviewed Wynola Richards, Ball State's very own Director of Affirmative Action before writing my column. We basically agreed to "disagree" on how to solve this problem. However, it seems that Mr. Ottman is the one crying "foul." Your statements about being out in the workforce lead one to believe you have been a victim of discrimination in the job market and therefore are more knowledgeable on the subject than I. Fine. Give us some evidence, otherwise, don't make what amounts to be a hollow excuse for not getting a job. Mr. Ottman, your reasoning is flawed, because you assume everyone in the upper echelon of society is "out to get you." Some people are, I'm sure, but not everyone. That is specifically the point I was trying to make. Some people are biased, but we cannot continue to assume that everyone is willing to discriminate.

My letter never made it into print. My editor has some ethical principle, that I'm quite unaware of, that prohibits employees of the *Daily News*, from writing letters in to the editorial section.

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[9] See column 1, appendix A. See also numbers 2,12 and 14.

[10] See Affirmative Action example 1, appendix B.

The hits just keep on coming. Holly Bast, one of our resident feminists, decided to pay me a visit on the editorial page the following week.[11] Ms. Bast was critical of my first column because, among other reasons, I didn't address how America would operate without affirmative action. The problem I find with her reasoning is that she presumes that there is only one solution: Affirmative Action. Affirmative Action is nearly equivalent to "equality of outcomes" not "equality of opportunity", as it should be.

I am amused how some people feel that statistics can make their argument ever so much more potent.[12] By throwing in some "facts", and I use that term loosely, whether they apply or not, our argument is suddenly proven. A few things I have learned about statistics from my economics curriculum:

1) Statistics can, and often are manipulated. One person may say the sky is blue, but another can show it as red. It all depends on where you are standing.

2) Statistics often don't take into account other factors. We can selectively leave out certain components so that our figures will look better. I like to look at it the way one of my professors does. He noted that you can never fully prove whether one thing truly causes another, because of all of the outside influences. You can only eliminate as many as possible.

Furthermore, statistics really didn't apply to the argument I was making. I contend that this policy is wrong because it uses flat-out discrimination to achieve what its supporters believe to be a higher purpose.

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[11] See Affirmative Action example 2, appendix B.

[12] See column 11, appendix A.

The one point of Ms. Bast's that I do want to discuss is number five.

> 5) White men rarely acknowledge that their intense anger is in part the result of a chronically low tolerance to frustration which results from generations of privilege within a system of their own making.

"Of their own making"

This is another problem I have. White men, today, are supposed to feel responsible for the actions of white men in the past. The anger and low tolerance is a result of being stereotyped, not of having to relinquish our traditional stranglehold on society. More and more today, white men are made to feel responsible for their ancestor's actions. These deeds occurred in the past. Something I neither supported, nor was I a part of. Yet, I am made to feel responsible in some way.

Furthermore, I prefer to earn what I receive. If a woman outperforms me, so be it. I'll just work that much harder. Also, I must point out, as obvious as it is that only one thing, in all of her eight points, applies to me: Who I am. I am a white male. I only make 4.25/hr, I'm not a CEO and I'm certainly not in congress. I just want to know one thing. This privileged status, being a white male: How has it helped me?

It was diversity week, and the paper didn't disappoint me in my search for the typical liberal sentiment on this issue. So, I clipped this one out and saved it so I could use it here. It extends from the issue I started, and I would like to comment on it.

Joel Erickson paints for the reader a number of possible scenarios, that he feels justify the need for activities geared toward special groups.[13] I, myself, see no problem with these activities. If you want to fund them, with your own money, go ahead. However,

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[13] See Joel Erickson column, appendix C.

my problem with this article is that Joel's rationale is flawed. Too many people feel that racism is a one-way street. It is not. I'll present like scenarios, with an added twist.

> A black student writes into the *Daily News* chastising all of the black "brothers" for spending their time with white women. They should take pride in their race and see only black ladies. This is not a hypothetical, it actually happened.
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> A famous black comedian comes onto stage and proceeds to stereotype white people, much to the pleasure of his predominately black audience. "White people can't dance. They're all so uptight, etc." Once again, truth. Watch any Black comedy hour television show. Ask Ted Danson how he feels about this one.
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> At a Black Panther Rally leaders swear to bring violence upon any white man who stands in their way, when and if they finally decide to carry out their "revolt." However, this revolt won't happen if they get their way. It sounds similar to the racist skinhead groups. The only difference is that the skinhead groups are white and want to "remove" blacks. The panthers only want their perceptions of equality to become a reality. However, both emphasize the mixture of racial politics and violence.
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> The scene is a U2 concert which features the rap group Public Enemy as an opening act. Public Enemy opens with a song denouncing the "white police state" in which we all live and later in the lobby sells copies of their album: *Fear of a Black Planet.*
>
> A middle-aged white man complains to his colleague about his son, being denied admission to a college, because minorities with lower qualifications were accepted before him. speaking of only lower-class minority members, but wealthy minority members as well. It happens all of the time.

I'm not going to make up a like scenario for the last one, because I don't really see Erikson's point. The previous examples were *not* presented to back an argument for the KKK or some radical skinhead group:

"You see? Blacks are racists, as well."

Rather, I was trying to point out that, what people consider to be racism, is all around us. We need to realize, that just because blacks are looked upon as predominately living in the lower class (the underclass), it does not mean that racism is a one-way street. If the tables were truly turned, as Erikson suggests, a lot of actions now

undertaken by blacks would be denounced as racist as well. Poverty is never an excuse for racism. Racism breeds racism, no matter where it comes from.

The special days, weeks, classifications, events, award ceremonies all serve to set us up as different. The more different we are, the harder it will be to accept each other. The sooner we learn how to treat one another as individuals, the sooner that a true "Unity Week" will be possible.

I did, however, have supporters of my stance, and I think it only fair, that I give them some space. Stephen George makes some valid points, that I would like to elaborate on.[14]

"Or, in other words, rather than insisting on non-separatist activities and race free decisions of opportunity, we, guilty white America, go for the quick racial fix by giving a handout and saying, 'Sure take this job or have your special activities.'"

Whereas, I don't choose to be quite as harsh in my assumptions (Most job offerings to minorities are not unearned), I agree. "Non-separatist activities and race free decisions of opportunity" are definitely the final goal of all sides on this issue. Getting there, is another story altogether. George hits the target I was looking for when he pointed out the necessity for insistence on "strict equality and high shared standards, such as earning what you get."

Mr. George feared running into the same problem I find myself dealing with on a weekly basis, however,when tackling such issues:

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[14] See Affirmative Action example 3, appendix B.

"Given the ever-present danger of being labeled a racist (one that I now run the risk of.....)"

Take a look at the first paragraph in column number two once again. Being white, it is hard for people to believe that I'm being objective on a policy such as this. True, I personally disapprove of affirmative action programs, yet does that mean that I am unable to remove the subjective elements?

Mid-way through the semester, a few students working with *Campus Report Card*, recognizing me as a crusader in the fight against affirmative action, asked me to do an interview. I answered my previous question, by my own actions, during the interview. No, you aren't allowed to be totally objective, at least not without help. I quoted Thomas Sowell, a black syndicated columnist, as representative of Black people who dislike this policy.[15]

Perhaps I had learned my lesson from when Byron Lee Ottman, in his editorial, when he wrote:

"Kolanowski, it is a proven fact that the group that has the most to lose in a society is the group that always cries foul."

So I responded with quotes from someone who, supposedly, has nothing to lose. It is a said state of affairs, when a person who is *viewed* to be in power, merely by association, is no longer able to speak their mind. Why? Because, every word uttered is sure to be biased. Our old friend PC is rearing its ugly head once again. It is no longer

[15] See Thomas Sowell column, appendix C.

"politically correct" to be in a position of power, unless, of course, you're a female or minority member.

It was not my intention to use any papers other than the *Daily News* in my discussion, however, on the week of this work's completion, I found a column that can be said to be "on all fours" with the points I was trying to make.[16]

[16] See John Leo Column, appendix C. Also see pgs. 39,40 of this text.

Individual Liberties

The rights of those in society who will be effected by that individual exercising his/her rights

vs.

The rights of the individual

Notice that the preceding is a balancing act.[17] All proposed government actions must be weighed carefully before being enacted. The libertarian model, in contrast, places the two in reverse order, putting the rights of the individual on top. I think that this is a flaw. If we accepted that premise, society would cease to exist. The two should be nearly equal, but the rights of society, should always weigh slightly heavier. As a member of society, you benefit from it's existence. It, in like form, needs to "benefit" from you. Certain rights must be sacrificed so that society may be preserved, and so you may benefit from the protections that it affords. Examples? The draft, eminent domain, police searches, traffic laws, and even taxes (the right to your earnings) are all examples of government intrusion into your dealings.

A vivid portrayal of this balancing act can be found in the shaping of our First Amendment. As you read the cases in the following section, put them through the "balancing test." Do they follow in the original intent of our founders? Do the decisions hold water, or do they hold a particular policy preference?

The First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

[17] See Balancing Test, appendix D.

press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.

Such is the First Amendment. Most people consider it to be the "free speech" amendment, but it is much more than that. It gives us the right of religious freedom, assembly privileges, and protest powers. That rights can be inferred directly from the language of the amendment. However, what about the freedom of expression? What about the right to burn the flag and the distribution of pornographic materials? Is the First Amendment being interpreted correctly, or are we losing sight of the "original intent" of the amendment?

> If public opinion is strong enough, and persistent enough, it will overcome *any* law, nullify the constitution itself, wash away the Bill of Rights. If the public opinion that produces a law changes, that law is left without visible means of support; it is living on borrowed time.
>
> But public opinion does not always push against the law dramatically and visibly. It can work against the law slowly, gently, like waves against a rock, over decades, so gradually that no one notices, eroding the base until one day a whole cliffside, a part of a mountain, crashes into the water.
>
> That is what has been happening in our lifetime to that part of the First Amendment which says, "Congress shall make no law abridging the freedom of the press."....[18]

Monroe further illustrated his point by demonstrating how the government has progressively moved in on free speech by regulating it, starting with the radio in 1927. Contrary to popular belief, the First Amendment has gone in not one, but two directions since its inception. Most people would agree that the first amendment has been liberalized from its original intentions, by including a whole host of "speech actions." (whether they agree with what has happened to it or not) But, as Monroe points out, the

[18] Bill Monroe, *The Slow Poisoning of the First Amendment*: Thirteenth Annual Frank E. Gannett Lecture, (1990).

First Amendment has become more conservative as well. Let us not forget speech codes, demonstration permit requirements, and broadcast regulations.

So what does the First Amendment seek to protect? Should we go with merely literal language, or should we defer to public opinion? Congress has played its part in regulating the First Amendment, but only the Supreme Court can determine what is constitutional. The Court is the body responsible for the shaping of the First Amendment. The essential question is: Are we giving too much power to those nine justices?

There are two different models of Supreme Court constitutional interpretation: The strict constructionist model and the evolutionist model.

> **Strict Constructionist:** Judges deciding constitutional issues should confine themselves to enforcing norms that are stated or clearly implicit in the written constitution.[19]

Why not just pass an amendment freeing up the speech that is so controversial? Then the issue of constitutionality would be moot. First of all, if you understand the amendment process, you would know that it is just not that easy, and that it takes nearly seven years for an amendment to become a reality. Getting a plurality of nine to agree is much easier to obtain, than a large majority of a few thousand. Those who favor a more liberal interpretation point out that the First Amendment's "original intent" was left open to interpretation. Here we come to the evolutionist model.

> **Evolutionist:** It permits changes in the scope of constitutional provisions as contemporary thinking and social conditions shed new light on constitutionally expressed norms.[20]

William Van Alstyne presents an example of this viewpoint:

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[19] John Hart Ely, *Democracy and Distrust: A Theory of Judicial Revue*, (1980).

[20] Derik Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations*, (1991).

> The First Amendment does not link the protection it provides with any particular objective and may, accordingly, be deemed to operate without regard to anyone's view of how well the speech it protects may or may not serve such an objective. The second amendment[21] expressly links the protection it provides with a stated objective...and might, therefore, be deemed to operate only insofar as the right it protects...can be shown to be connected with that objective.[22]

Within this model, the freedom of expression, or the definition of "speech acts" takes shape. Where it may not be traditional speech, such as that uttered from lips, certain acts are considered to be expressive in nature, and are thus afforded some level of protection. In this category we could include: "express incitement, false statements of fact, obscenity, commercial speech, fighting words, and child pornography."[23]

Speech can be classified in one of two categories: high or low-value. The lower the value, the less protection the speech is afforded, such as in obscenity, which often receives none. The Supreme Court is more likely to defer to state regulations in such instances. There is a proposed four-prong test for determining low-value speech:

> [A]that the speech be remote from the central first amendment focus on popular control of public affairs or the governmental process;
> [B]that the speech be largely noncognitive rather than cognitive, or knowledge-imparting, in nature;
> [C]that the speaker not be intending to convey a message;
> [D]that the speech fall into a class where it is relatively unlikely that the government's motive in seeking to regulate the speech is constitutionally impermissible.[24]

Although, once again, it is just not that simple. What level of protection should speech be provided? Often it depends upon the issue, and the policy preferences of the justices involved. The Supreme Court must balance the right's of the individual with those

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[21] Second Amendment: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[22] William Van Alstyne, *A graphic Review of the Free Speech Clause*, (1982).

[23] *Alcorn v. Anbro Engineering*, Inc., 2 Cal. 3d 493, (1970).

[24] R. George Wright, *The Future of Free Speech Law*, (1990).

of society. At what point does an individual's rights end, because they may infringe upon someone else's? One way to make a determination on this issue, is to examine case law concerning different speech concepts. I have chosen to elaborate upon three areas in which the Supreme Court's application of the First Amendment have been controversial: flag burning and symbolic speech, hate speech and the breach of peace, and finally, pornography and obscenity.

Flag Burning and Symbolic Speech

Some of the best examples of the "symbolic speech" definition can be found in the flag burning cases. Examples that define "symbolic speech" can be found in the flag burning cases. Our First Amendment expressly gives United States citizens the right to "petition the Government for a redress of grievances." We all pretty much agree that burning a flag would be petitioning the government, but does this action have to be spoken or written? Are actions covered under the "original intent" of the First Amendment?

One of the first instances of the court moving away from the express language of the First Amendment and adopting the notion of symbolic speech, came in 1931 in *Stromberg v. California*.[25] In *Stromberg*, the defendant was convicted under a California statute that illegalized the display of: "any flag, badge, banner or device... as a sign, symbol or emblem of opposition to organized government." The Supreme Court held that the statute was: "so vague and indefinite as to permit the punishment" of actions

[25] *Stromberg v. California*, 283 U.S. 359 (1931).

permitted under the First Amendment. The court didn't intend to protect all symbolic speech, but this is recognized as a general starting point.

Flag burning, however, didn't become a constitutionally justiciable issue until 1989, when the Supreme Court handed down its decision in *Texas v. Johnson*.[26] During the 1984 Republican convention in Dallas, Gregory Johnson burned a United States flag on the steps of the city hall, apparently after becoming dissatisfied with Reagan administration policies and certain corporations in the Dallas business community. Johnson was convicted for "desecration of a venerated object" in violation of a Texas statute.[27]

Johnson's conviction, however, was ultimately overturned by the Supreme Court by a six to three vote, which held: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the **expression of an idea** simply because society finds the idea itself offensive or disagreeable."

Take notice of the bolded out phrase: "expression of an idea." The court has defined flag burning as the expression of an idea. If we go with the precedent started in *Stromberg*, it should figure that burning the flag is a constitutionally protected act. Justice Rehnquist felt otherwise and delivered a stinging dissent:

"Far from being a case of 'one picture being worth a thousand words,' flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others."

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[26] *Texas v. Johnson*, 491 U.S. 420, (1989).

[27] Tex. Penal Code Ann. ss 42.09(a)(3)(1989).

It has been noted that Johnson could have used others means, that were just as adequate, in expressing his ideas. That is a good point. However, just because the flag is to be revered, is it entitled protection? Rehnquist should have based his argument on the grounds that burning the flag is not "symbolic speech." But, if we accept this "action", as "speech", we must also afford it protection. It is political speech, which is at the very core of the First Amendment. Do we dispute that the colonists, in their revolution with England, might have burned their fair share of British flags?

Nonetheless, the *Johnson* ruling incensed certain members in congress. Two days after the Supreme Court decision was handed down, legislation was passed in congress to test that ruling. The bill, which became known as "The Flag Protection Act of 1989,"[28] reads as follows:

> (a)(1) Whoever knowingly mutilates, defaces, physical defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both.
> (2) This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.
> (b) As used in this section, the term 'Flag of the United States' means any Flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

Obviously, the congress thought that it could slip one by the Supreme Court. The Senate sponsor of the bill, Joseph R. Biden Jr., in a statement about the *Johnson* decision, exposed the act's weakness:

> The flag is truly the nation's most revered and profound symbol, representing what this country stands for.... So, like many of our nation's citizens, I was shocked and saddened to hear the Supreme Court say that it did not know.... if the flag was a 'Symbol' that was 'sufficiently special' to warrant.... unique status' in our country.[29]

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[28] 18 U.S.C. ss 700 (Supp. 1990).

[29] Joseph R. Biden Jr., *Statutory and Constitutional Responses to the Supreme Court Decision in* Texas v. Johnson, (1989).

Notice that Biden, twice, refers to the flag as a symbol. To understand my argument, we, first, need a definition.

> **Symbol:** Something used for or regarded as representing something else, esp. a material object representing something immaterial;[30]

That "something immaterial" is an idea. That idea (symbolized by the flag) contains powerful emotions about our freedoms and those who died protecting them. Nonetheless, if the flag is the expression of an idea, why cannot the burning of the flag, non-acceptance of that expression, be one as well? It appears self-defeating, does it not? Why burn the symbol that represents the very freedoms that entitle you to commit just such an action?

Three days after the passage of the act, on October 30, 1989, three individuals: Shawn Eichman, David Blalock, and Scott Tyler set three flags ablaze on the steps of the Capitol. The individuals were brought up on three counts.

A. Violating the Flag Protection Act of 1989;
B. Disorderly conduct;
C. Demonstrating without a permit.[31]

The Corporation Counsel for the District of Columbia decided not to pursue prosection on the second and third charges, which would have been sure convictions, but rather chose to put the new act to the test. The other two charges only would have diluted the message congress was trying to get across.

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[30] *Random House Webster's College Dictionary*, (1991).

[31] *The Constitutionality of Flag Burning: Can Neutral Values Protect First Amendment Principles?*, 28 Am. Crim. L. Rev. (1991).

United States v. Eichman[32], like *Johnson* before it, made it to the Supreme Court. And, as earlier, the flag burning was deemed to be protected free speech. The court applied the neutrality test, defined in *United States v. O'Brien*[33], in striking down the act as unconstitutional.

> We think it clear that a government regulation is sufficiently justified:
> A. if it is within the constitutional power of the government;
> B. if it furthers an important or substantial government interest;
> C. if the governmental interest is unrelated to the suppression of free expression;
> D. if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

"Content neutrality is the litmus test for constitutional inquiry."[34]

The court held that the law failed this test, thus warranting it being labeled unconstitutional. However, the vagueness of the neutrality test should be noted. (A) The term "constitutional" is extremely ambiguous. What is viewed as a constitutional power today, may not be tomorrow. (B) All laws further a government interest, otherwise the legislation wouldn't pass Congress. Furthermore, the term "substantial" is a matter of opinion. (C) "Freedom of expression" is left up to interpretation. (D) Once again, the term "essential" is a matter of opinion.

For matters of simplification, we can reduce the test to a simple question: Does the law in question seek to regulate the content of the defendant's speech? If so, the law is unconstitutional. Furthermore, as an exception, the Supreme Court has upheld regulations that require a person's speech to be peaceful, which leads us into the next topic.

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[32] *United States v. Eichman*, 110 S.Ct. 2409, (1990).

[33] *United States v. O'Brien*, 391 U.S. 367 (1968).

[34] *Supra* note 32.

Fighting Words and the Breach of Peace

In 1919, several people passed out ant-war fliers, urging young men to dodge the draft, and were subsequently found guilty under the Espionage Act. The Supreme Court upheld the conviction, but out of the decision, written by Oliver Wendell Holmes, came an important legal doctrine, known as the "clear and present danger test."[35]

> "...The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

In 1950, the court received an example of a case that they felt met the requirements of the "clear and present danger test." In *Feiner v. New York*[36], the defendant, Irving Feiner, put up a stand in the primarily black part of Syracuse, New York, and then proceeded to attack the president and city officials in his speech. He urged the crowd to "take up arms" and to fight for the rights to which they were entitled. The police informed Feiner that he needed to cease with making such remarks, because the crowd to which he was speaking was becoming excited, and their was the possibility for violence. Irving ignored them and continued on. The crowd became more and more restless, until the point, at which, the police arrested Feiner.

Feiner was charged with "disorderly conduct" on the basis of his incitement of the crowd to violence. Although the majority of the Supreme Court upheld the conviction, Hugo L. Black and William O. Douglas, didn't quite see it that way. They felt that Feiner had been convicted, not because of what he had been saying, but because of the

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[35] *Schenck v. United States*, 249 U.S. 47, (1919).

[36] *Feiner v. New York*, 340 U.S. 315 (1951).

possibility of the crowd producing a hostile reaction. No violence had occurred at the time of police intervention. The majority pointed out the flaws in this line of reasoning.

> "...It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace..."

Feiner passed the "bounds of persuasion" when he urged the crowd to "take up arms" and fight for their rights. Feiner was not engaged in peaceful speech that might cause someone to become violent, which consequently, would be protected, but rather speech that specifically requested violence. It plainly asked for it. True, no violence occurred, but that is not to say that it wouldn't have, had not the police stepped in. If violence had taken place, it would have been too late, as noted in the majority opinion.

In *Chaplinsky v. New Hampshire*[37], we are presented with another legal doctrine in which the court sidesteps the "clear and present danger test", and comes up with yet another exception to the freedom of speech. Chaplinsky was a militant Jehovah's Witness leader, who after becoming fed up with corruption, pointed the finger at the police chief and called him a "G__-damned Fascist" and a "damned racketeer." Chaplinsky was prosecuted under a New Hampshire statute that made it illegal to:

> Address any offensive, derisive or annoying word to any person who is lawfully in any street or other place or call him by any offensive or derisive name, or make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation.

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[37] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

The state courts held that language such as this caused a breach of the peace by provoking the person, to whom this speech was addressed, to acts of violence. The Supreme Court, in upholding the conviction, went a step further.

> It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

The court felt, that without some sort of social content, speech is not protected. The court could have learned a lot from a children's saying. "Sticks and stones may break my bones, but names will never hurt me." If by some reason, the police chief could show that the statement was false and that it had disparaged his reputation, he might be able to file a libel or slander suit. But, insisting that a criminal penalty is the appropriate remedy for this action is a step in the wrong direction. Furthermore, law enforcement officers are no longer afforded the "fighting words" protection, which brings us to the next case.

In *State v. Montgomery*[38], we are presented with just such an example. On a cold February night in Seattle, two officers ran into a fifteen-year-old who was intent on cursing them with obscenities. Apparently, the juvenile was distraught with the police over recently receiving an alcohol violation. The boy was arrested and charged with disorderly conduct and possession of a controlled substance (marijuana), which was later found upon incarceration. The appeals court overturned the convictions. R. George Wright best sums up the court's reasoning.

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[38] *State v. Montgomery*, 31 Wash. App. 745, (1982).

> When such results are reached, the most typical rationale is that the police are or should be inured to abusive language, that they did not in fact react to the verbal provocation, and that they are paid not to be provoked and are under a legal duty in that regard.[39]

I find myself backward of the court in both of the previous two situations. Wright and the court may have looked at this issue from the wrong angle. He points out that the police should be "inured to abusive language." How much will this abusive language affect the relationship between other citizens and the police? In *Chaplinsky*, the court states that we should not "offend or annoy him, or [to] prevent him from pursuing his lawful business or occupation."[40] Does this speech not interfere with that motive?

In the *Johnson* case we held that the flag was a symbol expressing an idea. The content being, respect for the United States and those who died serving it. In *Montgomery*, it is the police who are being attacked by the offender's speech. They are real live people with a job to do. There is a "substantial government interest."[41] This speech only serves to create a lack of respect for officers, which may substantially impair their ability to enforce the law. Which parents do you think have more trouble disciplining their children? Would it be those that have taught the meaning of respect, or those that allow the children to "talk back?"

In *Cohen v. California*[42], we see another example of where a speech act evades the "fighting words" doctrine presented in *Chaplinsky*. The defendant, Cohen, in an attempt to protest the military draft, wore a jacket, in a corridor of the courthouse, that

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[39] *Supra* note 24.

[40] *Supra* note 37.

[41] *Supra* note 33.

[42] *Cohen v. California*, 403 U.S. 15, (1971).

had the inscription "F___ the Draft" on the back. Cohen was convicted under a California statute which prohibits "maliciously and willfully disturbing the peace or quiet of any neighborhood or person...by...offensive conduct."[43]

The court of appeals, in upholding the conviction, defined said "offensive conduct" as "behavior which has a tendency to provoke others to acts of violence or to in turn disturb the peace."

The Supreme Court overturned on the grounds that the conviction violated the First and Fourteenth Amendment, and cited the following reasons:

A. Cohen did not incite disruption or disobedience of the draft;
B. Cohen was expressing a message.

In defense of Cohen's wording the court noted: "The use of profanity... is often an effective means for individuals to convey drastically otherwise inexpressible emotions. Not everyone can be a Daniel Webster." Where I don't necessarily agree with the court's contention on an individual's usage of words, I agree that it is not an issue of legality, but rather what can and cannot be considered acceptable social conduct.

Pornography and Obscenity

Obscenity and pornography are two more exceptions to the "clear and present danger test" derived from *Schenck v. United States*. The problem, some suggest, with these two areas is that the danger isn't immediate, but rather a long-run issue, with serious societal impacts. The Supreme Court never seriously addressed the obscenity issue until 1957 in the *Roth*[44] case.

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[43] Cal. Penal Code ss 415.

[44] *Roth v. United States*, 354 U.S. 476 (1957).

The Roth test, developed from the case, finally gave a definition to "obscenity." "Implicit in the history of the First Arnendrnent is the rejection of obscenity as utterly without redeeming social importance." Obscene material "deals with sex in a manner appealing to prurient interest." Prurient refers to "material having a tendency to excite lustful thoughts." Now, keep in mind that material deemed to be obscene is not necessarily illegal. It only means that the material is not afforded First Amendment protection.

In *Miller v. California*[45], the court narrowed the definition of obscenity even further. "To convict a defendant of obscenity, it must show that the allegedly obscene work taken as a whole, lacks serious literary, artistic, political, or scientific value." The key word here is "serious." Once again, the extent to which this term is taken is a matter of opinion.

More recently, we have the 2 Live Crew case[46]. The United States District Court for the Southern District of Florida judge, Nick Navarro, shocked the record business when he declared the record "As Nasty as they Wanna' Be" to be obscene. However, the case was overturned at the appellate level, because the court held that Judge Navarro could not make the determination, on his own, that the work suffered from "no serious artistic value." He should have relied upon expert witnesses to make his determination. Which leaves us with a question. Who's decision will it be to determine if this is serious artistic talent: street thugs who listen to the music, or members from the National Endowment for the Arts?

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[45] *Miller v. California*, 413 U.S. 15, (1973).

[46] *Luke Records, Inc. v. Nick Navarro*, 960 F.2d 134, (1992).

Charles Krauthammer presents us with a non-constitutional argument about the 2 Live Crew controversy.[47] I often advocate the grounding of arguments, upon not what is necessarily constitutional, but what is common sense. Krauthammer employs this logic and produces some "social" points that need to be addressed.

> Most people, and in particular 2 Live Crew's intellectual defenders, fervently believe in the connection between good art and good society...And yet the corollary - if good art can elevate, then bad art can degrade - is a proposition they refuse to grasp.

We need to stop here for a minute. Krauthammer is making a distinction between "good art" and "bad art." The content neutrality standard set forth in *O'Brien* prohibits the regulation of the substance of speech, unless, of course, it meets the "clear and present" danger requirements set forth in *Schenck*, which, just by luck, doesn't apply to obscenity. The court's hands are tied. It must show that the overall work lacks artistic merit, which, as I pointed out, will now be a difficult thing to do. Krauthammer continues:

> As a psychiatrist, I used to see psychotic patients who, urged on by voices inside their heads, did crazy and terrible things such as immolating themselves. Now we have legions of kids walking around with the technological equivalent: 2 Live Crew wired by Walkman directly into their brains, proposing to "break your backbone...I wanna see you bleed."

Truth is sometimes scarier than fiction, and this is no exception to the rule. Young, impressionable minds are being warped by sadistic lyrics such as these, on a daily basis. Krauthammer finishes up by presenting some First Amendment consequences, such as:

> savage "wilding" attacks by conscienceless kids, a quadrupling of rapes in 30 years, random shootings of children in our cities, a doubling of the number of youths shot to death in the last six years alone.

It does not take an actuarial scientist to determine that there is a statistically significant relationship between dirninishing social values within laws and the increased

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[47] Charles Krauthammer, *U.S. Reaps Whirlwind as its Cultural Standards Decay*, Washington Post Writers Group, (1990).

incidence of crime. It makes you wonder. Are we really doing the "original intentions" of the First Amendment justice?

One question lies at the heart of this controversy. At what point does the cost to society become too great to warrant further expansion of liberties? In some areas, I believe we have already crossed that line. In others, we may not have come far enough. In a majority of instances, save flag burning, which I believe to be constitutionally protected free speech, I will tend to lean in the direction of the strict constructionist's viewpoint.

That is not to say that I do not agree with First Amendment rulings in finality. However, I disagree with the procedure. The court should not be a legislative body, which it often becomes, in deference to passing a constitutional amendment. There is a major flaw to this practice.

Justices are appointed for life. They are not subject to elections. Therefore, as they may benefit from a protected office, their responsibilities need to limited, namely to interpreting the law, not making it.

The *Daily News*

Chances are, that people will always find something to be offended by, when they sit down at the table to eat their breakfast, while reading their paper. In this age of political correctness, we are always worried about offending someone. The question is: Are they actually harmed?[48]

[48] See Christian, appendix C.

In this example, it is Christians that are being poked fun at. I, myself, was offended. But, was I injured? No, certainly not. The cartoonist was simply trying to make a humorous example out of the Christian viewpoint towards liberal values. One of the main goals of the political correctness movement, is to educate you world, as to how to speak, so that you might not offend someone. This, I believe, as I like to say, is a step in the wrong direction.

We shouldn't be concerned with the people that *are* offended by this language (speech *can* be ignored), such as racial slurs, but, rather with the people who *aren't* offended. Just as a parent wants to keep their child from offensive language and books displaying a low level of morality, so too should a society be concerned with what effects speech has on it. In the cartoon, just discussed, a point was being made. *Liberal values don't hold well with Christianity.* Are Christians going to be discriminated against after people view this sketch? Probably not. Refer, once again, to *State v. Montgomery* which was discussed in the Hate Speech section. Apply this test. Will this speech, if allowed, have an effect on police officers' ability to do their job? You decide.

Every once in awhile, the *Daily News* will print a story that has relevance to an issue that I am dealing with.[49] The District 19 dress code in Barnwell County, prohibits wearing "distasteful, or disruptive" symbols on clothes. Something, first, needs to be said about the rebel flag. This flag is not the symbol for racism, which is what the Blackville Middle School administration is getting at. The Civil War was fought on more grounds

[49] See Blackville Middle School, appendix C.

than just slavery. Here, we have an example of stereotyping logic. Slavery=Civil War=Rebel Flag=Racism.

It is amazing how the issue, turns from being strictly an issue concerning the freedom of speech to one of racial pride, and what is allowable in schools. How the wearing of a Malcolm X tee-shirt comes into this argument, is beyond my understanding. Symbols, such as a Malcolm X tee-shirt, only mean what the viewer interprets them to mean. It doesn't matter what the what the wearer intended, because his thoughts are not received through the general public's eyes. Symbols should not be regulated because they aren't specific in nature.

However, speech can be regulated. Here, we can finally show correlation with the *Montgomery* case. The youth was being abusive towards the police officers. In that instance, we have substance. The language is specific. However, down in Blackville, the "speech" is not specific. If the rebel flag shirts had "down with the blacks" printed on them, that is a different scenario altogether. We could see possible linkage between the wearing of the shirts and classroom disruption. The classroom is supported by the taxpayers, therefore we have demonstrated a qualified public interest in keeping the shirts out of school.[50]

Now, I turn to three letters to the editor that were printed on freedom of speech issues.[51] Professor Paschal has probably written more letters to the editor, to more papers, than anyone, ever. Paschal was upset, and rightly so, because he has never had

[50] See Specificity Test, appendix D.

[51] See Free Speech examples 1,2 and 3 appendix B.

any of his letters published. James then proceeded to write a reply that he loves the conservative issues discussed in the Indianapolis Star, and that you don't have to publish liberal ideas, to be "freedom loving." I tend to disagree. Paschal later writes in to tell, the reading public, that the Star reportedly censored him, not because of liberal views, but because of his presence on a "frequent-writer-list." I decided this issue needed to be clarified, so I wrote a column on it.[52] I covered the issue, completely, in the column, so I see little need to reiterate my views here.

Abortion

Abortion: The induced termination of a pregnancy. Also, the spontaneous expulsion of a fetus before it is capable of sustaining independent life.[53]

No political model could be made, in this day and age, without adding probably the most controversial, polarizing issue of our time: Abortion. Besides being hotly debated, it is one of the examples I like to make in demonstrating the effects of an activist court, and its ability to make constitutionality where it previously was non-existent. I also like to draw a parallel between abortion and doctors and this issue with Christians. In the introduction, I mentioned how this issue has persuaded people to set aside their Christian beliefs. Here, I'll give you an example where this issue has made a like move on doctors.

The following is excerpted from the Oath of Hippocrates, that all doctors take.

"...Similarly, I will not give to a woman a pessary to cause abortion..."

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[52] See column 10, appendix A.

[53] Shana Alexander, *State-by-State Guide to Women's Legal Rights*, (1975).

Doctor's swear to not give abortions, yet proceed to anyway. Why? Because it has been legalized by our government, which is the same reason, that I alluded to, that made Christians fall into this trap. (It should be renamed to the oath of Hypocrites.) How can we have a policy that is unsupported or even disapproved of by one third of our nation become constitutional?

First, we must go back to 1965 and review the *Griswold*[54] decision, where the court ruled that a Connecticut statute, that forbade the teaching or use of contraceptives, as unconstitutional. The Supreme Court ruled that the citizen had a basic right to privacy (their sexual lives in the immediate case) guaranteed through the First, Third, Fourth, Fifth and Ninth Amendments. Nothing specific was mentioned as to a right to privacy, but its intention was hidden in these amendments. The Ninth, which is the main force behind the constitutionalizing of this right, is printed below.

> **Ninth Amendment:** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The framers, had good intentions in mind with this amendment, however, they may have been a bit shortsighted in their prediction, of the complexity, of future issues. The framers were, no doubt, afraid of an all too powerful government. The vagueness of this amendment results in the placement of far too much power into the hands of nine people. If a proposed amendment fails, an activist court can always constitutionalize the issue through judicial revue.

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[54] *Griswold v. Connecticut*, 381 U.S. 479, (1965).

Which brings us up to *Roe v. Wade*.[55] Any state law that prohibited abortion, except to save the life of the mother, was ruled unconstitutional. The court also set up guidelines under which abortion could be regulated.

> (a) For the stage prior to approximately the end of the first trimester, the abortion decision must be left to the medical judgement of the pregnant woman's attending physician.
> (b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.
>
> (c) For the stage subsequent to viability*, the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate and even proscribe, abortion except where it is necessary, in appropriate medical judgement, for the preservation of the life or the health of the mother.[56]

*Sufficiently developed to be capable of living, under normal conditions, outside the uterus.[57]

The court had defined the issue in terms of trimesters, with the first trimester being totally unregulated. This is the time period in which most abortions take place. Only in the final trimester does the court mention the "potentiality for human life." Is the issue, of when a fetus becomes a life, a matter that should be decided by the Court?

More Common Sense Assumptions

The court had, originally, defined abortion as a matter of when a fetus becomes a protected life. Even the staunchest of right-to-life members would agree, that if, indeed, a fetus was not a human being, the government would have little reason to regulate abortion. It is not a method of suppressing women's rights, which we are all led to believe. The question you need to ask yourself is: Which is a more identifiable vehicle for the mobilization of support for abortion?

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[55] *Roe v. Wade*, 410 U.S. 113, (1973).

[56] *Supra* not 59.

[57] *Supra* note 16.

1. Continue the debate in the fashion started in *Roe*, by arguing when a fetus becomes a human, and if viability should be the standard used, or;

2. Identify the issue as a matter of a women's choice, thereby aligning yourself with the Woman's movement (picked up steam in the 60's) and any other organization committed to the rights of women. This is, primarily, why we have a substantial number of individuals who don't practice abortion, yet identify themselves as being pro-choice. (Here is where we experienced the downfall of religious beliefs, concerning abortion, of some Christians.) Who wants to be identified with the suppression of women's rights?

I wrote to Holly Bast, a self-identified feminist, and asked her what her opinion was concerning this theory. She responded that the issue wasn't about when life begins. (She had that all figured out. Life begins with the first recorded brain waves, which is near the end of the first trimester.) The issue was, rather, about "control" and "power". I guess you must believe what you preach.

The most hypocrisy on this issue, has not come from the left, but rather from Republicans, who often change their stance in light of public sentiment. Congressman McIntosh who happens to be from our district, who identifies himself as pro-life, provides us with a clear example. He is "pro-life", yet he is for a woman's choice when her pregnancy is a result of rape or incest. The public is vehemently outraged by these crimes, yet, does the matter in which a fetus is conceived, make it any less of a life? Republicans often find themselves trapped in just such a situation, in which they are forced to alienate their conservative backers, or side with them, and lose several moderates at the polls.[58]

Finally, I present to you some current contradictions in laws that deal with this issue. Murder has become an increasingly alarming crime to the public, which is directly

[58] See column 7, appendix B.

or indirectly making the courts all the more willing to hand down stiff judgements. What happens when murder becomes an issue concerning the fetus?

> Two 16-year-old Nashville Tennessee girls, charged with first-degree murder in the death of a fetus, kicked the 15-year-old mother in her stomach in a fight over the baby's father.[59]

A pro-lifer would label this as murder, but a pro-choice advocate would as well. Why? Everyone is fed up with crime, and the assailants denied her of her right to choose. Its too bad that this policy is a contradiction. How can you murder a life that does not exist? (Notice the use of the word "baby" in the extract. To substantiate the claim for murder, the unborn is, suddenly, no longer referred to as a fetus.

The Supreme Court further substantiated laws, such as these, when it made a ruling on the death of a fetus killed, in a drive-by shooting, in Panorama City, California.

> "Assault on a pregnant woman that kills her fetus can be prosecuted as murder, even if the fetus is not viable."[60]

Last, but not least, we have talk of a proposal that is to change the way men look at abortion by, none other than, restricting them. The proposed law would require men to have a waiting period before acquiring a vasectomy, and also require them to notify their spouse of such intentions. If woman's pregnancy can regulated, why not men's sterilization? The feminists that support this proposal, obviously suffer from shortsightedness. They'll see the light when this law comes back to haunt them, when it is summarily applied to women as well. It is unlikely that the bill will become law, and even more unlikely that it would survive a constitutionality test, given the *Griswold* decision.

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[59] Newspaper Extract, *Boston Globe*, (November 4, 1992).

[60] Newspaper extract, *New York Times*, (May 20, 1994).

The *Daily News*

Abortion. While affirmative action has done its share, no single has polarized the nation at opposite extremes, since the Vietnam War. I wasn't about to pass up my chance to add to this debate.[61] In my writings, I prefer not to stick to the point of it merely being wrong, and therefore making the assumption that it should be illegal. Rather, I like to provide viewpoints, that even those who support the practice of abortion, can relate to. Otherwise, I would lose my objectivity. It is easy to say, "of course abortion is wrong," but how can you make everyone see that? Once again, as I've said, we cannot make this a religious issue. Once that is done, you've alienated everyone who does not hold the same beliefs.

James Pavlik was the first to reply to one of columns concerning abortion.[62] Before I get into his points, take notice of his first line: "Like the majority of the radical right wing that Jon Kolanowski calls his own...." Mr. Pavlik has fallen into the stereotyping trap that I alluded to in my introduction.

Pavlik, a pro-choice advocate, tried to put words into my mouth when he wrote: "Kolanowski can be quoted as saying that babies, small humans, are consequences and should be accepted like a *punishment*." Actually, I said none of that. Pavlik tries to play, what I call, the pot calling the kettle black game. Both sides on the abortion issue are often guilty of this. The issue can be distorted to the point that the accuser suddenly

[61] See columns 2,4,7,9,11,14 and 15, appendix A.

[62] See Abortion example 1, appendix B.

becomes the accused. "You see, Kolanowski is the one who doesn't care about life." Actually, the word "punishment" was never used.

Pregnancy is the consequence, and it is the result of one of two occurrences: procreation or irresponsible behavior. The fact that birth control is not 100 percent effective is of little importance in determining responsibility. Pregnancy is a possible outcome of sexual intercourse, which may or may not be prevented by birth control. Even if there was a .05 percent chance of getting pregnant, you should still be prepared for all possible outcomes, not just the most likely. Abortion takes responsibility away from sexual behavior, and the importance away from the potentiality of human life.

Dana Duffy also wrote into the paper concerning the "consequences" of irresponsible sexual behavior.[63] We are led to believe that the pro-life viewpoint, espoused by myself and a few others, gives children a low sense of self-esteem.

"...And this is little Billy, our punishment for having sex..."

People do, it seems, have a fascination with the word "punishment." The word sells when it comes to persuasive speech, because it is no longer politically correct to *punish* someone. (They are just misunderstood.) Duffy, also, makes a very good point, however.

"Children are not consequences to be dealt with, mistakes to be owned up to or risks to take. They are indeed human beings who should be carefully planned and cared for."

Which leaves one question on my mind. If these "human beings" are to be carefully planned for, what happens when they are not? Are we to believe that the potentiality for

[63] See Abortion example 2, appendix B.

life is expendable, merely because we are unprepared? Certainly. Kevin Shea wrote a letter to the editor to dispel Duffy's "fuzzy logic."[64] I assent to his synopsis of Duffy's letter, and especially concerning his point about the cramming of opinions down someone's throat, so I included it. However, in the interest of fairness, I think it important to point out, that both sides cram this issue down *everyone's* throats.[65] Duffy is getting a migraine, yet she couldn't help but put her own two cents in. "Free speech" is hard to pass up.

One more thing needs to be said of Duffy's letter. She twisted her belief, that she retained from Catholicism, to fit her needs in this argument. You see this often when it comes to interpretation of biblical scripture in the construction of liberal arguments. Much more is read into the meaning than was ever intended.

"God gave each and every one of us the ability to think and choose."

True, God did give us that ability. However, I think it would be unfair to the priest to assume that he wanted this applied to abortion. The abortion controversy, once again, is not a matter of choice, but rather one of what constitutes a human life. The Catholic church has stated time and time again, that a fetus is a human being. Society needs to protect its members, *especially* those that cannot protect themselves.

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[64] See Abortion example 3, appendix B.

[65] See Abortion example 4, Appendix B.

Holly Bast, once again, graced the editorial page, and also proceeded to "call the kettle black."[66] Ms. Bast, like Pavlik before her, wants to throw the ball back into the pro-life court, by pointing out the use of violence by right-to-life members.

"I have always respected the pro-life position but the failure of its leaders to strongly condemn violent tactics make the entire movement increasingly suspect."

Bast also uses stereotypes in her example to try and persuade the reader that the "pro-life" movement advocates violence by not condemning it, which, for the record, is simply not true. As for the pictures of abortion doctors, with their addresses and phone numbers being passed around, you need, only, to apply the specificity test mentioned earlier. This information was available to the public anyway. It is a form of protest. The posters never called for the act of violence. A person who interprets these posters, may not see the issue the same as you, or the same as anyone else, for that matter.

We also need to realize that their isn't one national unified right to life movement. However, you can blame this fallacy on the press. The media has an uncanny way of associating violent attacks and questionable activities, by a few individuals, with the larger group that shares like beliefs. The mere fact that pro-life leaders do not agree with, or condone this type of behavior is hushed. Why? The public wants sensationalism, scandals and tales of misdeeds. Non-violence doesn't get ratings. Ms. Bast simply perpetuated the misleading viewpoint that the media has been selling us all along.

For those of you, who doubt the media's involvement in tainting this issue, you need turn no further than the fear of terrorism. In the recent Oklahoma city bombing, the

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[66] See Abortion example 5, appendix B.

prime suspects with the press, until the truth came out, were any and all possible Arab terrorist groups. It is easy to associate the word "Arab" with terrorism, because that is what we have been fed to us through our televisions and in our newspapers. How about the spread of AIDS and homosexuals? The amount of media coverage Liberace and Rock Hudson received didn't do this subject any justice when they were constantly referred to as "gay" men. Everyone in America soon knew of their former lovers. AIDS soon became labeled as a disease of homosexuals, thus leading to a generally unconcerned public. Now, we all know different.

Don't get me wrong. This is not turning into a derogatory appraisal of our media. However, it seems, that as society progresses into the Information Age it also digresses, when legions of couch potatoes receive the majority of their substantive news from the likes of *Hard Copy* and *Inside Edition*. Sensationalism in news coverage is another cost of the freedom of speech that has, as of yet, to be measured.

In this section, we only touched upon a few topics in the area of individual liberties covered by our constitution. But, by examining the concepts discussed, a good representation of what the *Responsibility Model* sanctions, in the way of government action, can be determined and then applied to other civil rights areas.

Only one test remains. There is no test for the original intent of the founders. There is much disagreement as to what each amendment specifically means, and even if we should try to interpret them in specific terms. Maybe we should spend more of our effort on trying to achieve the desired outcomes of the founders, rather than trying to interpret

words. To answer questions of constitutionality, one need turn no further than the preamble of our constitution.[67]

The Preamble

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

If the liberties we are granting, or taking away, don't seem to be improving our society for the better, in accordance with the preamble's standards, then they probably unconstitutional. I like to make the analogy of Bill Clinton and his fiscal advisors to this example. Just as he needs a real economist (instead of lawyers) in his administration, so too, the Supreme Court could use fewer lawyers. Every issue concerning society, cannot be handled through, strictly a determination of law. Where are all the sociologists?

[67] See Preamble Test, appendix D.

Conclusion

Well, there you have it the *Responsibility Model.* I thought, that I would finish out by discussing some current topics and how they would be handled, using the common-sense analysis that I defer to. You can find bits and pieces of these topics scattered throughout the fifteen columns in appendix A.

Gun Control: Guns are not a constitutionally protected right under our constitution. The Second Amendment is specific in stating that we have the right to bear arms for a militia, not high-powered assault rifles for rabbit hunting. Gun control, in recent years, has been utilized from the standpoint that control=crime reduction. Assault rifles, which are heavily regulated, are not the weapon of choice, anyway. Most murders are done with handguns. Simple Logic: Handguns are easy to conceal. What it boils down to is this: Do we honestly think that the type of people who would use a gun on another person, in the first place, are likely to obey these laws? Very unlikely. It is more of a societal problem. Our nation's youth are being nurtured on violence.

Term Limits: Term limits should never be put into effect. It denies the populace the right to choose in elections. This would not even be a proposal, if congress had the ability to regulate such incumbent "perks", as the franking privilege.

O.J.: The whole world stands by and watches as the American judicial system is made a mockery of on a daily basis. Somewhere along the line, we got away from strictly defending and prosecuting to searching for and covering up loopholes. I'm all for rights, but if you are guilty, you are guilty. Those who break procedural rules, should be severely

punished, with the guilty party still being sent where it belongs: jail. (More power to good-faith exemptions!)

Death Penalty: I constantly hear the argument: How can you call yourself pro-life, and yet support the death penalty? It is simple. I'm pro-life for fetuses, because I believe them to be innocent and pure. However, the death penalty is needed for those that loathe to live by societies standards. Imposing the death penalty is not a matter of choice on the part of state officials, but rather the offender's own decision. They chose to give up their rights to life, when they take someone else's rights (to life) away from them.

Homosexuals: Finally, we come to homosexuals. This class has suffered extensive discrimination, and mostly, because of stereotypes.

Military: Homosexuals have had more trouble with this branch of the government than any other.

1. Gays are effeminent like women. They wouldn't be able to handle combat situations.

If it is shown that a gay man, or a woman cannot fire the weapons, or handle combat situations, then that fault is related to job performance, not sexual orientation. Likewise, if a straight male cannot handle the situations aforementioned, why shouldn't he be released? (An effeminent heterosexual?)

2. Gays would make it difficult upon other soldiers living in the same barracks, because of the male to male attraction.

If gays are harassing other men, that is unrelated to orientation as well. It is called harassment, which could make them subject to court martial. Remember tailhook? Never judge a book by its cover.

Well, that is it from the *Responsibility Model.* Remember, when examining a public policy decision affecting your rights, remember to apply the three tests mentioned in appendix D: Specificity, Balancing and Preamble Tests. If you do, you won't go wrong.